

## MEMORANDUM

**Date:** December 09, 2011  
**To:** Transfer 77048  
**From:** jcefalo/bjordan  
**Re:** Transfer Evaluation

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This transfer proposes to change the point of diversion and place of use description for water rights 13-687A, 13-688, 13-697A, 13-698, 13-728, 13-729, 13-761, 13-4004, 13-700, 13-701 and 13-699A. The applicant, Whiskey Creek Ranch, would also like update the ownership for these Whiskey Creek and Trout Creek water rights. A total of 3.4 acres from water rights 13-697A and 13-698 will be dried up and used to mitigate for two small ponds on the ranch property. Application for permit 13-7783 was filed to authorize the storage for two ponds with a combined storage capacity of 11.4 acre-feet during the non-irrigation season (10/1-4/19). The remaining irrigation rights will be authorized to irrigate 348.0 acres within a 536.0 acre permissible place of use.

Three of the water rights (13-699A, 13-700, and 13-701) will be split. These rights in combination authorize the irrigation of 170 acres. Whiskey Creek Ranch is seeking a 37.4-acre equivalent portion of each water right.

The application for transfer indicates the total diversion authorized under the rights after the requested changes are 6.96 cfs and 11.9 acre-feet, which is in error. The total rate of diversion authorized under these rights should be 6.97 cfs as advertised. The total volume authorized for aesthetic and wildlife storage should be 7.0 af. These changes will be reflected on the transfer approval.

The applicant is seeking to change the nature of use to aesthetic and wildlife storage for a portion of water rights 13-697A and 13-698 to cover the evaporation losses of two ponds during the non-irrigation season. Timing for when water rights 13-697A and 13-698 can divert water to storage and when water can be stored under this transfer is a factor. The applicant is seeking to store water during the non-irrigation (10/1-4/19) and divert water to storage to mitigate for the ponds during the irrigation season 4/20-9/30. The time when water is diverted and when water is stored never overlap, resulting in the inability to divert water to mitigate for the evaporation losses and fill of the water stored in the ponds under permit 13-7783. Changing the nature of use to aesthetic and wildlife storage under this transfer would make it impossible to mitigate for water stored under permit 13-7783. However changing the nature of use for water rights 13-697A and 13-698 to mitigation would enable water to be stored and mitigated for under permit 13-7783. The applicant would be able to divert water for his ponds under permit 13-7783 while 3.4 acres under rights 13-697A and 13-698 stay idle, pre-mitigating for water that will be diverted during the non-irrigation season. Thus, the portion water rights 13-697A and 13-698 used to cover the evaporation losses and fill of the ponds will be changed to mitigation.

Permit 13-7783 seeks to authorize the storage of 12.1 af for two ponds with a surface area totaling 4.4 acres. The storage capacity of the two ponds is 11.4 af. This transfer mitigates for the evaporation losses of pond 1 (1.3 acres) and pond 2 (3.1 acres) and only mitigates for the annual fill of pond 2. Pond 1 is used as a 24 hour regulatory pond which is part of the applicants irrigation system. After the irrigations season, pond 1 will be left full covering the annual fill of the pond. Pond 2 will be full during the non-irrigation system and drained during the irrigation season. Pond 2 is nothing more than a small depression, which will be farmed.

Injury is unlikely to occur based on the fact that pond 1 (24 hour reg. pond) will be left full during the non-irrigation system and will remain full up to the irrigation system. The applicant will not have to fill the pond at the beginning of the irrigation season.

The evaporation losses and fill of the ponds will be authorized through water rights 13-697A and 13698, and the 24 hour pond, which makes it unnecessary for permit 13-7783 to include evaporation as part of the total volume. The proposed volume under permit 13-7783 will be reduced to 11.4 af.

Authority to File: Nathan Hale is the owner of Whiskey Creek Ranch, LLC. A 2007 deed conveyed all of the property and associated rights to Whiskey Creek. Whiskey Creek owns most of the property described in the water right listings from the 1920 Bear River decree. Three rights 13-699A, 13-700, and 13-701, will be split as part of the transfer. Whiskey Creek provided reliable evidence supporting its proposed split of the rights.

There are three small parcels, not owned by Whiskey Creek, that fall within the broad place of use description from the 1920 Bear River Decree. A 2-acre parcel in SESE Sec 18 is owned by Ralph Olorenshaw. However, this property falls on the opposite side of the creek as the rest of the irrigated acres. Another 2-acre parcel in NESE Sec 18 is owned by Steven Harrison. These properties do not appear to be irrigated, beyond 1/2 acre of lawn and garden. Water district delivery records provided by the applicant indicate that water has not been delivered to Olorenshaw or Harrison in the last 15 years. We contacted Mr. Harrison directly. He confirmed that he does not have any irrigation rights out of Whiskey Creek.

The third property is a 12-acre parcel in NESE and SESE of Sec 18 is owned by Daniel Mickelson. His property appears to be irrigated pasture. There are many other water rights associated with the property, including a license for irrigation and Last Chance canal water. The water district records show that the rights once delivered to Daniel Mickelson are now delivered to Whiskey Creek. The applicant obtained an affidavit from Mr. Mickelson in support of the transfer. No protests were filed against the application.

Validity: The applicant was asked to provide a map showing where each of the water rights being transferred are currently used. 2009 aerial photography shows the acres identified have been irrigated. A portion of the property in Section 18 has been in CRP. Applicant provided the CRP contract. At this time forfeiture is not an issue.

The transfer includes water right 13-4004, which is a statutory claim. The priority date on the claim is May 1, 1971. The transfer application includes an affidavit from Daniel Mickelson stating that the water under 13-4004 was used on the property from 1971 to 2006, when the property was sold to Nathan Hale. Mr. Mickelson purchased the property in 1964. No exceptions were filed against the statutory claim. Trout Creek has never been under regulation by a watermaster so there are no delivery records available. For purposes of this transfer, applicants proof of priority date is sufficient. A field exam would be of little use in this case. The applicant is attempting to change the water right POD to coincide with the current POD. A field exam would simply show that water is being taken from Trout Creek at the proposed POD.

Injury to Other Water Rights: Transfer proposes moving the POD for 13-761 from the middle fork of Trout Creek to the north fork of Trout Creek. This change actually constitutes an exchange because the proposed POD is located upstream of the confluence of the north and middle forks. We will allow the applicant to address the exchange as part of this transfer application. The water right will be conditioned to protect water users on the north fork of Trout Creek. This transfer was advertised and there were no protests. Whiskey Creek water rights are within WD 13S and Trout Creek water rights are within 13P and 13Q. Water master does not oppose transfer.

Enlargement of Use: There are no apparent enlargement concerns.

Local Public Interest: No issues identified.

Beneficial Use / Conservation of Water Resources: No issues identified.

Review of the application finds there is not clear inconsistency with the criteria set forth in Section 42-222, Idaho Code.